



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for unpaid rent and to keep all or part of the security deposit in partial satisfaction of his claim.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on July 22, 2010. The Tenant confirmed receipt of the hearing package.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

1. Did the Tenant breach the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord proven entitlement to a Monetary Order as a result of that breach?

Background and Evidence

I heard undisputed testimony that the parties entered into a written fixed term tenancy agreement effective January 1, 2010 which was set to switch to a month to month tenancy after December 31, 2010. Rent was payable on the first of each month in the

amount of \$1,200.00 and \$600.00 was paid for the security deposit on December 22, 2010. The parties came to a mutual agreement to end the tenancy and the Tenant vacated the rental unit May 30, 2010.

The Landlord testified that he encouraged the Tenant to move out of the rental unit because she stopped paying rent. She paid her security deposit and January 2010 rent and then stopped paying. He confirmed there was a flood in the rental unit in January 2010 and that he verbally agreed to reduce the Tenant's rent to accommodate the inconvenience of having the restoration company working in the unit. He confirmed with the caretaker that she continued to occupy the rental unit during the restoration. He referred to his documentary evidence which included a letter from the restoration company that confirms "the unit was in liveable conditional, with the exception of the days that the flooring was installed".

The Landlord stated that he offered the Tenant a discounted rent of \$600.00 for the remainder of January 2010, and \$200.00 per month until the work was completed in April, for a total rent reduction of \$1,200.00. The Landlord is seeking a monetary order for the unpaid rent for February, March, April, and May 2010, less the rent reduction for a total amount of \$3,600.00 (4 x \$1,200.00 - \$1,200.00).

The Tenant testified and confirmed there was a flood on January 16, 2010. She argued that she was not able to reside fulltime in the rental unit during the restoration and stated that she had a verbal agreement with the Landlord that she could live there free while the restoration was going on. She confirmed that all of her possessions remained in the unit and she stayed at her boyfriends or friends places at different times. The Tenant questioned why the Landlord made no attempt to cash her post dated cheques that she had provided him if he was expected to be paid for rent.

The Landlord stated that he made several attempts to cash the post dated cheque however he was told they would not clear the Tenant's bank. He stated that he felt sorry for the Tenant after she kept telling him she had no money and had dental

problems so he did not seek to have her evicted earlier. He did attempt to cash the May post dated cheque and it was returned NSF.

Analysis

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant.

In the case of verbal agreements, I find that where verbal terms are clear and both the Landlord and Tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise.

The evidence supports the parties entered into a fixed term tenancy agreement and the Tenant was required to pay \$1,200.00 rent per month. The Landlord claims for unpaid rent for February, March, April, and May 2010, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. The Tenant had full possession of the rental unit during this time and the evidence supports the unit was "in livable condition: therefore I find that the Tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. Based on the aforementioned I hereby approve the Landlord's claim of \$3,600.00.

Monetary Order – I find that the Landlord is entitled to a monetary claim and this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit as follows:

Unpaid Rent for February, March, April, May 2010 (4 x \$1200.00)	\$4,800.00
Subtotal (Monetary Order in favor of the landlord)	\$3,600.00
Less Security Deposit of \$600.00 plus interest of \$0.00	-600.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$3,000.00

Conclusion

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$3,000.00**. The order must be served on the respondent Tenant and is enforceable through the Provincial Court as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 13, 2010.

Dispute Resolution Officer